

ATTACHMENT 2

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

March 29, 1995

AGENDA ITEM # 15

ITEM: CONSIDERATION OF APPEAL PROCESS FOR STAFF DETERMINATION OF DISQUALIFICATION OF RECYCLING MARKET DEVELOPMENT ZONE PROGRAM LOAN APPLICANTS FOR CREDIT REASONS

I. SUMMARY

The purpose of this item is to present procedures for Applicant appeals of staff's determination not to recommend RMDZ loan applications to the Board's Loan Committee for consideration due to credit reasons.

II. COMMITTEE ACTION

The Market Development Committee approved this item at its March 8, 1995 meeting.

III. OPTIONS FOR THE BOARD

The Board may decide to:

1. Accept the procedures as presented.
2. Modify the procedures.
3. Reject the procedures.

IV. STAFF RECOMMENDATION

Staff recommends Board approval of the appeal procedures below.

V. ANALYSIS

BACKGROUND

The Recycling Market Development Zone (RMDZ) Loan staff currently accepts loan applications during quarterly cycles. Regulations require that following the staff's preliminary review of an application for an RMDZ loan for eligibility and completeness, Board staff shall prepare a summary of findings (the Credit Analysis) for each application (the Review Process). Applications which meet the following criteria are recommended to the Loan Committee:

- (1) The Applicant is found creditworthy, and the collateral and the source of repayment are sufficient for the requested loan amount; and
- (2) The Applicant has adequately demonstrated the appropriateness of the loan for use in the project.

Those applications which fulfill (1) and (2) are ranked in order of their ability to meet the Board adopted priorities, and are then presented with the Credit Analysis by staff to the Loan Committee.

According to 14 CCR 17935.5(a), the Loan Committee evaluates only those applications presented by staff pursuant to the Review Process. Staff notifies all other Applicants in writing that their applications will not be recommended to the Loan Committee.

Key Issues

Currently no procedures exist for an Applicant to appeal the Board staff's determination not to recommend an RMDZ Loan Program application to the Loan Committee for credit reasons. Two options exist: (1) do not allow appeals by establishing that staff determinations are final, or (2) establish appeal procedures.

The first option is unduly restrictive and not in keeping with general lending industry practices. The second option, described below, provides an Applicant with an opportunity to explain and overcome the reasons leading to the determination.

FISCAL IMPACTS

None.

FINDINGS

Staff proposes adopting the following procedures for Applicant appeals of loan applications previously determined by staff to be uncreditworthy.

1. An Applicant appealing a determination by staff must submit a ~~written~~ Request for Reconsideration by Staff. The Request must be addressed to Program staff and be received by staff no more than sixty (60) calendar days following the date on the initial notice of negative determination.
2. The Request must include an explanation concerning all disputed or deficient items leading to the original determination and must be accompanied by all documentation

supporting the explanation or correcting the deficiencies, as well as the items listed below.

- a) The Applicant must provide current financial statements for the business applicant, its owners, affiliates, subsidiaries, and guarantors if those in the original package are more than ninety (90) calendar days old upon receipt of the Request for Reconsideration by staff.
 - b) The Applicant must provide a complete signed copy of the most recent federal tax return for the business applicant, its owners, affiliates, subsidiaries, and guarantors if not included in the original package.
 - c) The Applicant must provide all other documentation regarding deficiencies at the time of the original determination.
3. Staff will have ten (10) business days in which to review a Request for Reconsideration and the explanation and new documentation submitted therewith. Upon receipt of the new documentation, staff will review the information to determine whether (1) the new documentation, in staff's best judgment, adequately overcomes all reasons for the determination, and (2) contains all information required to continue processing the application. Based upon this analysis, the application shall then be either:
- a) forwarded with a positive recommendation to the Loan Committee for evaluation (see Step 4 below); or
 - b) held and the Applicant notified of the need for additional information (see Step 5 below); or
 - c) returned to the Applicant with a letter denying the Request for Reconsideration (see Step 6 below).
4. If staff deems that the new documentation adequately overcomes all reasons for the original determination and that the package is complete in all respects, staff will so notify the Applicant and proceed with the Preliminary Review and Review Process. The application will be included for Loan Committee review with those received in the loan cycle immediately following staff's new determination.
5. If staff determines that the documentation provided adequately overcomes all reasons for the original determination, but that the package remains incomplete and is, therefore, unable to be processed; staff will within ten (10) business days of receiving the Request for

Reconsideration by Staff send a deficiency letter to the Applicant indicating that staff has found the explanation adequate to overcome the original determination, but that the application is incomplete. The letter will clearly spell out all deficient items and specify the date by which the items must be received by staff for processing to continue.—(Staff must receive all deficient items within ten (10)) business days from the date of the letter to continue processing.) If the application is deemed complete following the resubmittal, staff will so notify the Applicant and proceed with the Preliminary Review and Review Process. The application will be included for Loan Committee review with those received in the loan cycle immediately following staff's new determination. Applications not completed by the stated date will be withdrawn by staff as incomplete. Staff will send a letter to the Applicant within ten (10) business days of its action advising the Applicant of staff's action and that reapplication may be made in a subsequent loan cycle and will be subject to staff review at that time.

6. If staff determines that the documentation provided with the Request for Reconsideration by Staff does not overcome all reasons for the original determination, the package will be submitted to the Loan Program Manager for concurrence. (The completeness of the package is irrelevant in this instance due to the credit nature of the determination. That is, for example, an unacceptable credit history cannot be overcome by receipt of copies of federal tax returns.) If the Loan Program Manager is not available for concurrence, the package will be reviewed by a designated loan staff member. (In either case, this second person to review the package will be known as the "Reviewer".)

- a) If the Reviewer concurs with staff's negative determination regarding the Request for Reconsideration by Staff, the Applicant must be advised in writing within ten (10) business days of the receipt of the additional information.

- 1) The letter must clearly spell out the reason(s) for the new determination and any deficiencies that remain in the file. The letter must advise the Applicant of the right to appeal to the Loan Committee. The letter notifying the Applicant of staff's determination regarding a Request for Reconsideration by Staff must be sent over the signature of the Reviewer.

- 2) The Applicant appealing staff's negative

determination of a Request for Reconsideration by Staff must submit a written Request for Appeal to the Loan Committee to the Reviewer. The Request must be received by staff no more than sixty (60) calendar days following the date of the letter advising the Applicant of staff's determination regarding the Request for Reconsideration by Staff. Upon receipt of such written request, staff will prepare an abbreviated Credit Analysis based solely upon the information contained in the loan file for presentation with the applications received in the loan cycle immediately following the Request. The Credit Analysis will clearly advise the Loan Committee that staff does not support the credit. Additionally, the letter must disclose to the Applicant that the Loan Committee meeting is a public forum and all discussion becomes a part of the public record. Consequently, all issues raised at the meeting are subject to public disclosure.

In the event that Loan Committee recommends that staff reconsider its determination, the Applicant will have ten (10) business days to provide all current and updated documentation including financial statements and federal tax returns in which the package was deficient. Upon receipt of the new documentation, staff will complete its analysis and Credit Analysis for presentation to Loan Committee at its next regularly scheduled meeting. Staff's decision and recommendation will be based upon the information contained in the file at the end of that ten (10) day period. The Credit Analysis submitted to Loan Committee must clearly identify the application as a reconsideration based upon Loan Committee recommendation, and must thoroughly discuss the reasons for and against approval of the credit. Analysis presented to the Market Development Committee and the full Board must also clearly identify the request as a reconsideration based upon Loan Committee recommendation, and must thoroughly discuss the reasons for and against approval of the credit. The recommendation by Loan Committee that staff reconsider its decision in no way implies an immediate approval by either staff, the Loan Committee, the Market Development Committee, or the full Board.

Loan Committee decisions will be final.

b) If the Reviewer does not concur with staff's

determination, the Reviewer or another designated staff member (in either case, the "Presenter") shall process the application and present it to Loan Committee.

The Credit Analysis submitted to the Loan Committee must clearly identify the application as one of a split decision among staff and thoroughly discuss the reasons for and against approval of the credit. Analysis presented to the Market Development Committee and the full Board must also clearly identify the credit as one of a split decision among staff and thoroughly discuss the reasons for and against approval of the credit.

VI. APPROVALS:

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Legal Review/Approval: Maureen Morrison *MM* Date/Time: 3/17/95 - 3pm